

FILED

May 10, 2007

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ACTING ATTORNEY GENERAL OF NEW JERSEY
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Attorney for the State Board of Medical Examiners

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

By: Tobey Palan
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE	:	
SUSPENSION OF THE LICENSE OF	:	Administrative Action
	:	
ENRIQUE M. BURSZTYN, M.D.	:	
License No. MA36989	:	CONSENT ORDER
	:	
TO PRACTICE MEDICINE & SURGERY	:	
IN THE STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey State Board of Medical Examiners (Board) upon receipt of information that on or about June 22, 2005, the Maryland State Board of Physicians (Maryland Board) by Final Decision and Order (Maryland Order) denied Respondent's application for initial medical licensure, based upon Respondent's willfully making false representations on his licensure application. (A copy of the Maryland Order is annexed hereto and made a part hereof).

On or about July 10, 2006, the New York State Board for Professional Medical Conduct (New York Board) filed a Determination and Order (New York Order) suspending Respondent's license for one year and

requiring Respondent to complete sixty (60) hours of continuing medical education in the field of ethics. (A copy of the New York Order is annexed hereto and made a part hereof). On or about August 3, 2006, the New York State Supreme Court, Appellate Division, Third Department (New York Appellate Division) granted Respondent a temporary stay of his suspension of license. On or about October 10, 2006, the New York Appellate Division vacated the stay, the initial New York Order filed on July 10, 2006 was sustained and Respondent's suspension became effective on November 2, 2006. (A copy of the Decision and Order on Motion in New York is annexed hereto and made a part hereof).

Respondent's New Jersey license is presently active. Respondent does not admit to the truth or accuracy of the findings stated in the Maryland and/or New York Orders discussed above. The Board finding the within disposition to be adequately protective of the public health, safety and welfare;

IT IS, therefore, on this 9th day of May, 2007, ORDERED THAT:

1. Respondent, Enrique M. Bursztyn, M.D. license to practice medicine in New Jersey is suspended for one year, retroactive to the suspension in New York that began on November 2, 2006.

2. Respondent shall comply with the attached Directives for Physicians whose license has been suspended by the Board, which are incorporated herein by reference.

3. Prior to any application for reinstatement of Respondent's medical license in New Jersey, Respondent must submit documentation to the Board proving that he has fully complied with the New York Order filed on or about July 10, 2006.

4. Nothing herein shall prevent the Board from taking disciplinary action based on facts not alleged herein.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: Sindy Paul, MD
Sindy Paul, M.D.
Board President

I have read and understood the within Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

Enrique M. Bursztyn, M.D.
Enrique M. Bursztyn, M.D.

Consent as to the form and entry of this Order is hereby given.

Arthur S. Friedman
Arthur S. Friedman, Esq.

IN THE MATTER OF

ENRIQUE M. BURSZTYN, M.D.

APPLICANT.

* BEFORE THE MARYLAND

* STATE BOARD OF PHYSICIANS

* Case Number: 2003-0080

* * * * *

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

On September 4, 2003, the Maryland State Board of Physicians (the "Board") issued formal charges in the form of a Notice of Initial Denial of Application for Medical Licensure to Enrique Bursztyn, M.D. ("Dr. Bursztyn"). At the time of his application, Dr. Bursztyn was practicing medicine in the State of New York as a radiologist and neuro-radiologist.

The Board's denial of Dr. Bursztyn's application for medical licensure was based on Dr. Bursztyn's disciplinary history in the State of New York and three incorrect answers he gave to questions asked on his Initial Application for Maryland Medical Licensure. Specifically, the Board charged that Dr. Bursztyn had violated Md. Health Occupations (HO) Code Ann. § 14-404(a) (36), by willfully making misrepresentations when seeking or making an application for licensure; § HO 14-404(a)(21) by being disciplined by a licensing or disciplinary authority in the state of New York with underlying disciplinary grounds of HO § 14-404(a) (3) (unprofessional conduct in the practice of medicine) and 14-404(a) (15) (fee-splitting).

A hearing was held on May 12, 2004 before Administrative Law Judge (ALJ), Nancy E. Paige, at the Office of Administrative Hearings. A Board Licensure Analyst

testified on behalf of the State. Dr. Bursztyn testified on his own behalf and also presented one witness from the University of Maryland. A total of 32 documentary exhibits were admitted into evidence – 29 by the State and 3 by Dr. Bursztyn.

On August 10, 2004, the ALJ issued a Proposed Decision in which she recommended that the charges be upheld in part and dismissed in part. As a proposed disposition, the ALJ recommended that Dr. Bursztyn's Initial Application for Medical Licensure be denied. Both the State and Dr. Bursztyn filed Exceptions to the ALJ's Proposed Decision and the State filed a Reply to Dr. Bursztyn's Exceptions. An oral Exceptions hearing was held before the Board on November 17, 2004.

This Final Decision and Order is the Board's final ruling on this case after considering the entire record, the written Exceptions filed by the parties and the oral arguments made at the Exceptions Hearing.

II. FINDINGS OF FACT

The factual findings made by the Board in this Final Decision and Order have been found by the preponderance of the evidence. The preponderance of the evidence, not the clear and convincing, standard applies to Board disciplinary actions arising out of denial of licensure applications under HO § 14-205 (a).¹

Dr. Bursztyn was licensed to practice medicine in the State of New York at the time he submitted an application to the Board. On May 3, 2002, Dr. Bursztyn submitted to the Board an Initial Application for Medical Licensure. Question 17 on the Board's application form asks a series of "Yes" or "No" Character and Fitness questions, (17 (a) – 17 (r)), to

¹ Under the Administrative Procedure Act, the standard of proof in a contested case is preponderance of the evidence unless an agency's regulation or statute imposes the clear and convincing standard. Md. Code Ann., State Gov't Article § 10-217.

which the applicant is asked to check "either YES or NO." Following Question 17, the Board's reinstatement application states:

If you answered "YES" to any of the questions in item 17, on the following page list all adverse actions taken against you and provide a complete explanation. Attach any supporting documentation that applies (copies of all complaints, malpractice claims, adverse or disciplinary actions, arrests, pleadings, judgments or final orders.)

A. Questions 17 (b) and 17 (c) regarding prior investigations/disciplinary action:

Questions 17 (b) and 17 (c) on the Board's application form asked:

- b) Has a state licensing or disciplinary board (including Maryland), or a comparable body in the armed services, taken action against your license?
(Such actions include, but are not limited to, limitations of practice, required education, admonishment, reprimand, suspension, or revocation.) [Refer to the document *Grounds for Board Action in Maryland* included in your application packet.]

Dr. Burstyn answered "No" to this question.

Question 17 (c) on the Board's application form asked:

- c) Has any licensing or disciplinary board in any jurisdiction (including Maryland), or a comparable body in the armed services, filed any complaints or charges against you or investigated you for any reason?

Dr. Burstyn answered "No" to this question. Dr. Bursztyn did not attach any explanation or documentation regarding his "No" answers to questions 17 (b) and 17 (c).

The Board, however, in the course of reviewing and investigating Dr. Bursztyn's application, obtained information from the national databank and from the New York State Department of Health that the medical board for the State of New York had investigated Dr. Bursztyn and filed charges against him for committing unprofessional misconduct by engaging an unlawful percentage fee-sharing arrangement. Dr. Bursztyn received a

letter, dated September 22, 2002 from the Office of Professional Medical Conduct of the Department of Health of the State of New York. That letter informed Dr. Bursztyn that "the Office is currently investigating your medical practice" and went on to inform that "[t]he issues under investigations are: The fee reimbursement agreement and the leasing agreement you have with Bronx Resources" (State's Exhibit 32.)

Also in response to the Board's request for verification of Dr. Bursztyn's medical license in the State of New York, the Board received written notification that the "New York State Department of Health took disciplinary action against [Dr. Bursztyn's] license." (State's Exhibit 3.) The Board received further information that as a resolution of the investigation and charges, Dr. Bursztyn had entered into a public Consent Agreement and Order with the Office of Professional Medical Conduct with the New York State Department of Health, that became effective November 29, 2001. That Consent Agreement imposed a \$10,000 fine and required Dr. Bursztyn to complete 150 hours of public service and contained Dr. Bursztyn's notarized signature, dated November 15, 2001. (State's Exhibit 25.) The State of New York website entitled, Professional Misconduct and Physician Discipline," summarized the terms and conditions of that Consent Agreement and categorized it as an "Action." (State's Exhibit 25.)

The Board's licensure staff contacted Dr. Bursztyn and inquired about the discrepancy between his "NO" answers to Questions 17 (b) and (c) and the existence of his disciplinary history with the New York medical board and the Consent Agreement that he entered with the New York medical board. (Transcript ("Tr."), pages 42 & 79). After this inquiry from the Board's licensure staff and after consulting with an attorney, Dr. Bursztyn wrote a June 20, 2002 letter to the Board revealing that he had entered into the

November 29, 2001 Consent Agreement. (Tr., page 144.) On August 29, 2002, Dr. Bursztyn wrote a second letter to the Board, dated August 29, 2002, in which he revealed that

I incorrectly checked no where I was asked if I had ever been investigated. I was in fact investigated by the New York State Department of Health and I entered into a consent order on November 29, 2001.

(State's Exhibit 13.)

At the hearing, Dr. Bursztyn testified that he answered "No" to question 17 (b) because he did not interpret the Consent Agreement as an action against his medical license because it imposed a fine and required community service, but did not limit his ability to practice medicine by imposing a suspension or revocation. (Tr., p. 135.) Dr. Bursztyn further testified that he answered "No" to question 17 (c) because he had answered "No" to the preceding question 17 (b). (Tr., p. 136.)

At the time Dr. Bursztyn completed the Board's application form, he knew of New York's past investigation of him, the issuance of charges against him in New York, and knew that he entered into a Consent Agreement as a resolution of New York's charges against him. Dr. Bursztyn should have answered "Yes" to Questions 17 (b) and 17 (c) and provided a detailed explanation of the New York medical board's investigation of him and the charges issued against him for engaging in an illegal fee-sharing agreement. In addition, Dr. Bursztyn should have provided copies to the Board of the New York charging document and the Consent Agreement and Order, which became effective November 29, 2001. If these documents were not available, then Dr. Bursztyn should have provided a detailed explanation and summary to the Board along with the application form.

B. Question 17 (I) regarding history of malpractice claims:

Question 17 (I) on the Board's reinstatement application asks:

- I) Within the past five years, has anyone filed or settled a medical malpractice action in which you were named as a defendant?

Dr. Bursztyn answered "yes" to Question 17 (I). In a box below this question, the applicant is required to fill in the blanks. Below are the actual numbers Dr. Bursztyn reported:

Number of malpractice claims ever filed against you 3.

Number of malpractice claims filed or settled against you within the last 5 years 2.

Number of claims paid within the last 5 years 1) as a result of judgment 0

2) prior to judgment 2 (If three or more in the past five years, explain below and include copies of all complaints and malpractice claims, and document the disposition of each complaint/claim.)

In the space provided for explanation following the above box, Dr. Bursztyn wrote:

07-01-97. Failure to diagnose breast cancer interpret a mammogram, the case [patient's name omitted] was settle [sic] out of court. See attached complaint .

In the course of reviewing and investigating Dr. Bursztyn's application, the Board learned from the national databank that during the five years prior to Dr. Bursztyn's completion of the May 3, 2002 application, his insurer had paid the following four claims: (1) \$750,000 in October 1998 to settle a claim failure to timely diagnose breast cancer in 1995; (2) \$900,000 in May 2000 to settle a claim for failure to diagnose breast cancer in 1996 (the case referred to by Dr. Bursztyn, quoted above); (3) \$550,000 in November 2000 to settle a claim for failure to diagnose breast cancer in 1996; and (4) \$20,000 in December 2000 to settle a claim for failure to diagnose breast cancer in 1989. In addition, in 1995 a settlement of \$162,500 was paid on Dr. Bursztyn's behalf to settle a 1987 claim for failure to diagnose nasopharyngeal carcinoma; \$600,000 was

paid to settle an unspecified claim from 1990; and an additional claim filed in 1993 was closed without any payment on behalf of Dr. Bursytn. (State's Exhibit 5.)

On July 11, 2002, the Board's licensure staff wrote to Dr. Bursytn about the discrepancy in the number of malpractice cases that he reported to the Board on the application form and the number provided to the Board from the report by the national databank. Approximately three months later, in an October 15, 2002 letter to the Board, Dr. Bursztyn provided a complete list of claims against him with the respective outcomes, four of which were settled within the five years preceding his application. (State's Exhibit 15.) Two of the seven claims were in addition those included in the report from the national databank. At the administrative hearing, when Dr. Bursztyn was asked how he came to put in the inaccurate numbers regarding his malpractice history on the application form that he submitted to the Board, he answered: "I don't recall." (Tr. 137.)

Dr. Bursztyn should have provided complete and accurate numbers regarding his medical malpractice claim history on the application form he submitted to the Board. Specifically, Dr. Bursztyn should have filled in the blanks on the form with the following numbers:

Number of malpractice claims ever filed against you 7.
Number of malpractice claims filed or settled against you within the last 5 years 4.
Number of claims paid within the last 5 years 1) as a result of judgment 0
2) prior to judgment 4 (If three or more in the past five years, explain below and include copies of all complaints and malpractice claims, and document the disposition of each complaint/claim.)

In addition, as the application instructed, since there were 4 claims paid within the last 5 years, Dr. Bursztyn also should have provided further explanation and include copies

of all complaints and malpractice and documentation regarding the disposition of each complaint/claim.

III. CONCLUSIONS OF LAW

Based on the foregoing facts and pursuant to the authority granted the Board under section 14-205(a) of the Maryland Medical Practice Act (the "Act") to deny a license to an applicant "for any of the reasons that are grounds for action under § 14-404," the Board finds that Dr. Bursztyn has committed acts which, were he a licensed physician in Maryland, would have violated section 14-404 (a) (36) of the Act, in that he willfully made false representations in seeking and making application to the Board for a medical license. Thus, under section 14-205(a)(1)(iii) of the Act, the Board concludes that Dr. Bursztyn's license should be denied.

The Board concludes, as did the Administrative Law Judge, that Dr. Bursztyn did not violate Md. Health Occ. Code Ann. §§ 14-404 (a) (21) (disciplinary action by another jurisdiction), 14-404 (a) (15) (fee-splitting) and 14-404 (a) (3) (unprofessional conduct in the practice of medicine.).

IV. SANCTION

Physicians must disclose accurate and honest information during the application process so that the Board can make informed decisions regarding an applicant's character and qualifications to practice medicine. Applicants should be forthcoming with accurate, complete, honest answers on their licensure applications. The Board should not have to ferret out the truth by resorting to repeated letters requesting explanations for discrepancies and guide and cajole the applicant along the path to providing truthful answers that he could have provided initially.

In this case, Dr. Burstyzn made false representations on his application for initial medical licensure regarding an action that had been taken against his medical license in the State of New York. Dr. Burstyzn admitted that he knew of the action that had been taken against his license in New York, *i.e.* the Consent Order that he had voluntarily entered with the New York board in November 2001. The State of New York classified the Consent Agreement as "disciplinary action" in a written notification to the Board and on its public website. (State's Exhibits 3 and 25.) Dr. Burstyzn, however, assigned his own meaning to Question 17 (b). Dr. Burstyzn's testimony that he could answer "No" because the penalty imposed by the New York medical board was a fine and community service was self-serving and not credible in light of the true facts.

Dr. Bursztyn's answer to Question 17 (c) was patently false. Question 17 (c) asked if any other state licensing or disciplinary body "filed any complaints or charges against you or investigated you for any reason?" Dr. Bursztyn answered "No." Dr. Bursztyn does not dispute that he knew the New York medical board investigated him and issued charges against him for an illegal fee-sharing arrangement. Furthermore, he received a letter from the New York medical board informing him in writing that the board "is currently investigating your medical practice." The language of Question 17 (c) is clear and unambiguous and Dr. Bursztyn's explanation for his answer was illogical. In this instance also, he deliberately falsified his application.

The discrepancies in Dr. Bursztyn's answers respecting his malpractice history are equally, if not more, troubling than his false answers to Questions 17 (b) and (c). Dr. Bursztyn had seven malpractice cases filed against him but only reported three. The Board does not believe that Dr. Bursztyn did not remember that he had substantially more

than three claims against him in his medical career. If Dr. Bursztyn was having difficulty remembering the exact number, he could have noted this on the application form and later supplement his answer. Dr. Bursztyn's malpractice history is information that is significant to the Board's decision on whether to grant a medical license. In this instance also, Dr. Bursztyn deliberately falsified his application.

Dishonesty and deceit on licensure applications seriously compromises the Board's ability to make informed decisions regarding whether to grant a medical license. Unless applicants provide complete, honest, and accurate answers to questions on licensure applications, the Board cannot make informed decisions regarding which applicants are qualified to safely and competently render medical care to the citizens of Maryland. Dr. Bursztyn's dishonest application undermines public confidence in the Board's ability and authority to appropriately license and discipline physicians and also undermines the integrity and dignity of the medical profession. In a similar Board case, the Board expressed similar concerns about a physician's dishonest answers on health facility application forms:

[D]isreputable conduct undermines public confidence in the integrity and dignity of the medical profession [L]ack of candor disparages professional principles and dishonors the reputation and credibility of the great majority of physicians who practice with honesty.

The Board's mission is the assurance of quality medical care by Maryland physicians. For the Board to implement its mandate, it is vital that all physicians understand their obligation to disclose accurate and truthful information on the Board's license renewal applications, even if disclosure means exposure of problematic information. Physicians must recognize that the truthful completion of . . . applications is also not discretionary, but is a duty imposed by the Maryland Medical Practice Act. Indifference to one's legal and ethical responsibilities is not an option.

In the Matter of Dora M. Mamodesene, M.D., Board Case No. 00-0690, Final Order at pp. 14-15 (February 27, 2002).

In sum, the Board finds no merit in Dr. Bursztyn's reasons and excuses for answering "No" instead of "Yes" to Questions 17 (b) and 17 (c) and for misrepresenting his malpractice case history by providing inaccurately low numbers in response to Question 17 (l). Dr. Bursztyn decided for himself what information the Board would see on his application for a medical license. Dr. Bursztyn's selective disclosures were an attempt to thwart the Board in its mission to protect the public. The Board concludes that Dr. Bursztyn's answers to these three questions constitute willfully false representations in seeking and making application for licensure in violation of section 14-404 (a) (36) of the Maryland Medical Practice Act. The Board finds that Dr. Bursztyn is an unsuitable candidate for a medical license in the State of Maryland and denies his application for initial medical licensure.

V. ORDER

Based on the foregoing, it is hereby:

ORDERED that the Board's charges be **UPHELD** as to Md. Code Ann., Health Occupations Article § 14-404 (a) (36) and **DISMISSED** as to Md. Code Ann., Health Occupations Article § 14-404 (a) (21) with underlying grounds of §§ 14-404 (a) (3) & (a) (15); and it is further

ORDERED that the Application for Initial Medical License submitted to the Board by Enrique M. Bursztyn, M.D. be **DENIED** under Md. Code Ann., Health Occ. § 14-205 (a), and be it further

ORDERED that this is a Final Order of the Maryland State Board of Physician Quality Assurance, and, as such, is a **PUBLIC DOCUMENT** pursuant to the Maryland State Gov't Code Ann., §§ 10-611 *et seq.*

6/22/05
Date

Harry C. Knipp
Harry C. Knipp, M.D., Chair
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occupations Code Ann., § 14-408 (b) & COMAR 10.32.02.03H (2), Dr. Bursztyn has the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the Administrative Procedure Act, State Government Article and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Bursztyn files an appeal, the Board is a party and should be served with the court's process. In addition, Dr. Bursztyn should send a copy to the Board's counsel, Thomas W. Keech, Esq. at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201.

I HEREBY ATTEST AND CERTIFY UNDER
PENALTY OF PERJURY ON 11/8/07
THAT THE FORGOING DOCUMENT IS A
FULL, TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE AND
IN MY LEGAL CUSTODY.

[Signature]
EXECUTIVE DIRECTOR
MARYLAND BOARD OF PHYSICIANS



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

Public
(212) 416-8661

RICHARD RIFKIN
Deputy Attorney General
State Counsel Division

JAMES B. HENLY
Assistant Attorney General in Charge
Litigation Bureau

October 10, 2006

Via Federal Express

Arthur Friedman, Esq.
275 Madison Avenue, Suite 1000
New York, New York 10016

Re: Bursztyn v. Novello, Index No. 500993

Dear Mr. Friedman:

Enclosed please find the Decision and Order on Motion rendered by the Third Department in the above-mentioned case on October 4, 2006, denying Petitioner's motion for a stay. As we discussed last week, the temporary stay will be vacated twenty-three days from today, on November 2, 2006. We have notified the Department of Health and the Department of Education that the temporary stay will be vacated on that date.

Very truly yours,

Tracy Peterson
Tracy Peterson
Assistant Attorney General

Encl.

cc: Joseph C. Bierman, Esq.
Gus Martine
(Via Fed Ex; w/ encl.)

RECEIVED

OCT 12 2006

NYS DEPARTMENT OF HEALTH
DIVISION OF LEGAL AFFAIRS
BUREAU OF LITIGATION

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

-----x
In the Matter of ENRIQUE M. BURSZTYN,

Petitioner,

- against -

ANTONIA C. NOVELLO, as Commissioner
of the New York State Department of
Health, et al.,

NOTICE OF ENTRY WITH
DECISION AND ORDER ON
MOTION

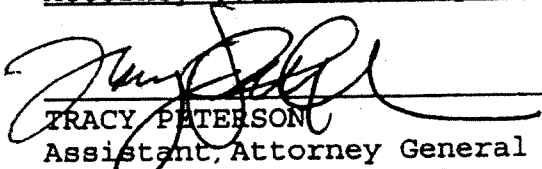
Docket No. 500993

Respondents.
-----x

PLEASE TAKE NOTICE that the attached is a true copy
of a Decision and Order on Motion in the above entitled proceeding
duly entered in the office of the Clerk of the Supreme Court of
the State of New York, Appellate Division, Third Judicial
Department, on the 4th day of October, 2006.

Dated: New York, New York
October 10, 2006

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for State Respondents


TRACY PETERSON
Assistant, Attorney General
120 Broadway - 24th Flr.
New York, New York 10271
(212) 416-8661

Arthur Friedman, Esq.
Attorney for Petitioner
275 Madison Avenue - Suite 1000
New York, New York 10016

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 4, 2006

Case # 500993

In the Matter of ENRIQUE M.
BURSZTYN, Petitioner,
v

**DECISION AND ORDER
ON MOTION**

ANTONIA C. NOVELLO, as
Commissioner of the New York State
Department of Health, et al.,
Respondents.

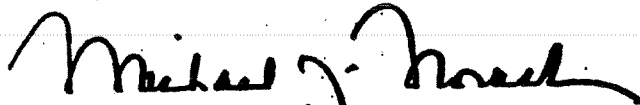
Motion for stay pending determination of proceeding.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

CARDONA, P.J., PETERS, SPAIN, CARPINELLO and KANE, JJ., concur.

ENTER:



Michael J. Novack
Clerk of the Court

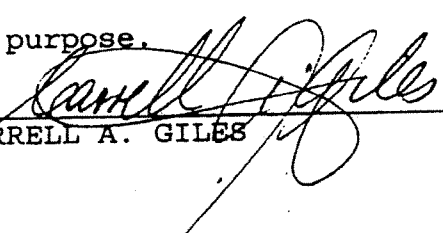
AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

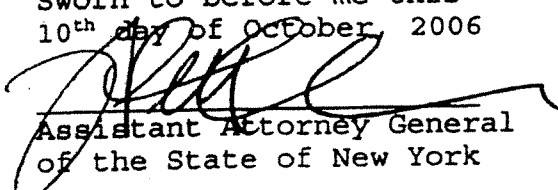
CARRELL A. GILES being duly sworn, deposes and says that she is a Legal Assistant in the office of ELIOT SPITZER, the Attorney General of the State of New York, attorney for respondent herein. On the 10th day of October, 2006, she served the annexed NOTICE OF ENTRY WITH DECISION AND ORDER ON MOTION upon the following:

Arthur Friedman, Esq.
Attorney for Petitioner
275 Madison Avenue - Suite 1000
New York, New York 10016

attorney for Petitioner in the within entitled proceeding by depositing a true and correct copy thereof, properly enclosed in a pre-paid Federal Express wrapper in a Federal Express drop box regularly maintained by Federal Express, at 120 Broadway, New York, New York 10271, directed to said attorney at the address within the State designated by him for that purpose.


CARRELL A. GILES

Sworn to before me this
10th day of October, 2006


Assistant Attorney General
of the State of New York

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
ENRIQUE M. BURSZTYN, M.D.

DETERMINATION

AND

ORDER

BPMC #06-150

A hearing was held on June 21, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated March 20, 2006, were served upon the Respondent, **Enrique M. Bursztyn, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Patrick F. Carone, M.D., M.P.H.**, Chairperson, **Trevor A. Litchmore, M.D.**, and **Ms. Virginia R. Marty**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Arthur S. Friedman, Esq.**

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Bryan J. Venerus, M.D.

Luke A. Handy, M.D.

Mr. Jonathan Lawrence

Enrique M. Bursztyn, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Enrique M. Bursztyn, M.D., the Respondent, was authorized to practice medicine in New York State on April 10, 1981, by the issuance of license number 145707 by the New York State Education Department (Petitioner's Ex. 4).

2. On June 22, 2005, the Maryland State Board of Physicians ("Maryland Board"), by a Final Decision and Order ("Maryland Order"), denied the Respondent's Application for Initial Medical License, based on willfully making false representations on the license application (Petitioner's Exhibit 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"

- New York Education Law Section 6530(21) - "Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so;"

The Respondent was also charged with acts that, had they occurred in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(1) - "Obtaining the license fraudulently..." The Hearing Committee does not sustain this allegation for reasons explained below.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his application for license to practice medicine refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Maryland Board denied the Respondent's application for a license to practice medicine because of several false answers given by the Respondent on his May 15, 2002, application to practice medicine (Respondent's Exhibit C). The Respondent answered "No" to questions about whether any licensing or disciplinary board had ever taken action against his license and whether any licensing or disciplinary board had filed charges against him or investigated him. In fact, such an investigation had taken place in New York State in 2001. That investigation resulted in the filing of a Statement of Charges against the Respondent and a Consent Agreement and Order, dated November 28, 2001, that imposed penalties on the Respondent (Petitioner's Exhibit 6). The penalties were a fine and the requirement that he perform 150 hours of community service.

The Respondent also provided false information on the Maryland application about his malpractice litigation history. On the application, the Respondent stated that there had been three malpractice claims filed against him in his career and that two such claims had been filed or settled in the last five years. The Maryland Order held that the actual

numbers were seven claims filed during the Respondent's career and four claims filed or settled in the last five years.

Public Health Law Section 230(10)(p) seriously limits the scope of an expedited hearing such as this hearing. The Hearing Committee is required by this statute to accept the findings of the Maryland Board without question. Any argument by the Respondent that the Maryland Board got the facts wrong must be rejected automatically. The Respondent, however, despite repeated holdings in the Maryland Order that the false answers were not the result of honest mistakes, testified that he did not intentionally provide false answers on the Maryland application.

The Respondent testified that he had answered "No" to the question about whether any licensing or disciplinary board had taken action against his license because he had believed at that time that the penalties imposed in New York in November 2001, a fine and community service, did not constitute action against his license. The Respondent made this same argument in the Maryland proceeding. The Maryland Board rejected this argument as "not credible in light of the true facts." (page 9 of the Maryland Order, Petitioner's Ex. 5). Regarding the Respondent's claim that he made an honest mistake in answering the question about whether any licensing or disciplinary board had filed charges against him or investigated him, the Maryland Board found this claim "illogical" and that "he deliberately falsified his application." (page 9 of the Maryland Order). Regarding the Respondent's claim that the inaccurate information about his malpractice history was an honest mistake, the Maryland Board concluded that it "does not believe that Dr. Bursztyn did not remember that he had substantially more than three claims against him in his medical career....In this instance also, Dr. Bursztyn deliberately falsified his application." (pages 9-10 of the Maryland Order). The Maryland Board concluded that the Respondent "decided for himself what information the Board would see on his

application for a medical license. Dr. Bursztyn's selective disclosures were an attempt to thwart the Board in its mission to protect the public." (page 11 of the Maryland Order).

These conclusions in the Maryland Order concerning the reason for the false answers are the conclusions that must be adopted by this Hearing Committee. It will be concluded that the Respondent provided false answers intentionally for the purpose of misleading the Maryland Board.

These intentionally false answers, according to the New York Statement of Charges, would constitute professional misconduct in New York State in three ways: obtaining a license fraudulently (Education Law Section 6530[1]), moral unfitness (Education Law Section 6530[20]), and willfully making or filing a false report (Education Law Section 6530[21]). The Hearing Committee agrees with the Statement of Charges regarding the allegations of moral unfitness and willfully making or filing a false report. The Hearing Committee disagrees with the allegation regarding obtaining a license fraudulently. Although the Respondent attempted to obtain a Maryland license fraudulently, the attempt was unsuccessful. The Respondent cannot be sanctioned for obtaining a license fraudulently when he did not obtain a license at all.

The testimony of Dr. Venerus, Dr. Handy and Mr. Lawrence, all of whom work with the Respondent at Little Falls Hospital in Little Falls, New York, makes two points. One is that the Respondent is a skillful and dedicated radiologist. The other is that Little Falls Hospital is in a medically underserved rural area and that a revocation or suspension of the Respondent's license would cause great difficulties for the hospital and its patients.

These are relevant concerns, but they do not outweigh the seriousness of the Respondent's dishonesty in his Maryland application. The Respondent, who refused during the hearing to take responsibility for making intentionally false answers on the Maryland application, needs to understand that his dishonest behavior is totally

unacceptable. The Hearing Committee concludes that the only way that that can be accomplished is with a severe penalty. The Respondent's license to practice medicine will be suspended for one year. The commencement of the suspension will be 30 days from the effective date of this Determination and Order to give Little Falls Hospital time to make alternate arrangements. The Respondent will also be required to complete continuing medical education courses in the field of ethics.

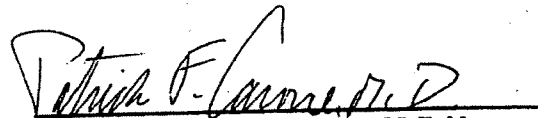
ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for one year. The suspension will commence 30 days after the effective date of this order.
2. The Respondent is ordered to complete 60 hours of continuing medical education in the field of ethics no later than the conclusion of the suspension of his license. All such courses must be approved in advance by the Petitioner's Office of Professional Medical Conduct.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Massapequa Park, New York

5 July, 2006


Patrick F. Carone, M.D., M.P.H.
Chairperson

Trevor A. Litchmore, M.D.
Virginia R. Marty

APPENDIX 1

EXHIBIT

EV 6/21/06 JW

STATE OF NEW YORK
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH

IN THE MATTER

OF

ENRIQUE M. BURSZTYN, M.D.
CO-05-07-3684-A

NOTICE OF

REFERRAL

PROCEEDING

TO: ENRIQUE M. BURSZTYN, M.D.
2 Seward Avenue
Utica, NY 13502

ENRIQUE M. BURSZTYN, M.D.
Little Falls Hospital
140 Burwell Street
Little Falls, NY 13365

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19th day of April 2006, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 10, 2006.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 10, 2006, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

March 20, 2006



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

ENRIQUE M. BURSZTYN, M.D.
CO-05-07-3684-A

STATEMENT

OF

CHARGES

ENRIQUE M. BURSZTYN, M.D., Respondent, was authorized to practice medicine in New York State on April 10, 1981, by the issuance of license number 145707 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 22, 2005, the Maryland State Board of Physicians (hereinafter "Maryland Board"), by a Final Decision and Order (hereinafter "Maryland Order"), DENIED Respondent's Application for Initial Medical License, based on willfully making false representations on his application for an initial medical license thereby deliberately falsifying his application.

B. The conduct resulting in the Maryland Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York State Education Law §6530 (1) (obtaining the license fraudulently);
2. New York State Education Law §6530 (20) (moral unfitness); and/or
3. New York State Education Law §6530 (21) (willfully making or filing a false report required by law or by the department of health or the education department).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530 (9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:


1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law Section 6530 (9)(d) by having his application for license to practice medicine refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *March 20*, 2006


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve a answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

~~Complaints relating to Public Health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.~~

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.


51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

~~51.16 Establishment, Construction, Rate Hearings.~~ Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
March 10, 1997


HENRY M. GREENBERG
General Counsel



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Public

July 10, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Enrique M. Bursztyn, M.D.
2 Seward Avenue
Utica, New York 13502

Enrique M. Bursztyn, M.D.
Little Falls Hospital
140 Burwell Street
Little Falls, New York 13365

Robert Bogan, Esq.
NYS Department of Health
Hedley Building -4th Floor
433 River Street
Troy, New York 12180

Arthur S. Friedman, Esq.
275 Madison Avenue
Suite 1000
New York, New York 10016

RE: In the Matter of Enrique M. Bursztyn, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-150) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

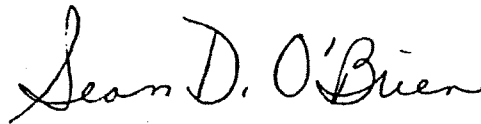
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NAME: Enrique M. Bursztyn, M.D.
NJ License # MA036989

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number¹: _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.